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*Attorneys for Defendant
Wal-Mart, Inc.*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

NICOLE G. GARDNER,

Plaintiff,

v.

WAL-MART, INC., a foreign limited-liability
company, doing business as WAL-MART
STORE #2884; DOES I through 20, inclusive,
and ROE BUSINESS ENTITIES 1 through 20,
inclusive,

Defendants.

Case No.:

[District Court, Clark County Case No.: **A-19-803554-C**, Dept. No.: XXIX]

**DEFENDANT WAL-MART, INC.'S
PETITION FOR REMOVAL OF CIVIL
ACTION**

[JURY DEMAND]

COMES NOW, Petitioner WAL-MART, INC. doing business as WAL-MART STORE #2884 (hereinafter "Petitioner" or "Walmart"), by and through its counsel of record, the law offices of PHILLIPS, SPALLAS & ANGSTADT, LLC, and hereby submits the following memorandum in support of its Petition for Removal of Jurisdiction to Federal Court:

I.

Petitioner WAL-MART, INC. is currently the only true named Defendant in the above-captioned action.

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II.

The above-entitled action was commenced by Plaintiff NICOLE G. GARDNER (hereinafter “Plaintiff”) on October 14, 2019 in the Eighth Judicial District in and for Clark County, District of Nevada. This case is currently pending in that court. Plaintiff served her Summons on Petitioner on December 6, 2019. True and correct copies of Plaintiff’s operative Complaint and Summons are attached hereto as **Exhibits “A” and “B,”** respectively. After Petitioner filed a timely Answer, Plaintiff served a Petition for Exemption from Arbitration on January 6, 2020. A true and correct copy of Plaintiff’s Petition for Exemption from Arbitration (hereinafter “Petition for Exemption”) is attached hereto as **Exhibit “C.”**

Plaintiff’s January 6, 2020, Petition for Exemption is the “first paper” received by Petitioner from which removability may clearly be ascertained as the amount in controversy in this action exceeds \$75,000.00. In this Petition for Exemption, Plaintiff claims she slipped and fell at Walmart Store No. 2884 on October 27, 2017. *See* Exh. C at 2:3-6. Plaintiff now estimates that her past medical specials to date total **\$63,670.66**. *Id.* at 3:23. Plaintiff also indicates not only has she experienced pain in her daily grooming activities, she was impacted economically and financially in her daycare business, which required her to hire a substitute daycare provider to carry out the tasks of her business. *Id.* at 3:9-12.

Based on her past medical specials coupled with the alleged pain and suffering, loss of income, and extra personnel Plaintiff alleges she was forced to hire due to her incident, Plaintiff’s damages clearly exceed the \$75,000.00 federal threshold. As such, there is no dispute that 28 U.S.C. §1446(b)’s \$75,000 amount in controversy requirement is met and as a year has not yet passed since Plaintiff filed her Complaint on October 14, 2019, this Petition is timely.

III.

This Petition is timely filed pursuant to 28 U.S.C. § 1446(b).

IV.

This is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C. §1332(a) and is one which may be removed to this Court by Petitioner, pursuant to 28 U.S.C. § 1441(a).

...

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V.

Petitioner is informed, believes, and thereon alleges that Plaintiff is, and was at the time this action was commenced, a citizen of the State of Nevada.

VI.

Petitioner Walmart is, and was at the time this action was commenced, a Delaware corporation with its principal place of business in the State of Arkansas. As such, Petitioner Walmart is a citizen of the State of Delaware and citizen of the State of Arkansas.

VII.

The above-entitled civil action is for personal and economic damages Plaintiff allegedly incurred after slipping and falling at Walmart Store No. 2884 located at 8060 West Tropical Parkway, Las Vegas, Nevada (Clark County).

VIII.

A copy of Petitioner's Petition for Removal of Civil Action, seeking removal of the above-entitled action to the United States District Court, District of Nevada, together with a copy of the Summons and Plaintiff's Complaint, have been deposited with the Deputy Clerk in the County Clerk's office for the Eighth Judicial District Court in and for Clark County, Nevada.

IX.

True and correct copies of all pleadings and papers served upon Petitioner in the above-entitled action are filed herewith.

X.

This Petition is filed with the Court within thirty (30) days after Petitioner was served with Plaintiff's Petition for Exemption which was the "first paper" that put Petitioner on notice that Plaintiff's claimed damages clearly exceed the \$75,000 federal diversity jurisdiction threshold. (Exh. C. at 3:9-12, and 3:23.) Given the amount of her past medical specials (\$63,670.66), her claim for pain and suffering, the fact that the Plaintiff is still experiencing pain (anticipation of future treatment), and the fact that she had to hire a substitute daycare provider to carry out the tasks of her business, Plaintiff's damages will clearly total over \$75,000. Therefore, Plaintiff's anticipated damages meets 28 U.S.C. §1332(b)'s amount in controversy requirement. *See* 28 U.S.C. §1332(a) (2015); *see also* *Crum v. Circus Circus*

1 *Enters.*, 231 F.3d 1129, 1131 (9th Cir. 2000) (reversing dismissal for lack of jurisdiction, relying, in
 2 part, on estimated future medical expenses to determine that the amount in controversy exceeded the
 3 jurisdictional amount); *see also Lockett v. Delta Airlines, Inc.*, 171 F. 3d 295, 298 (5th Cir. 1999)
 4 (holding that it was facially apparent from plaintiff's Complaint that claims exceeded \$75,000.00 where
 5 plaintiff alleged property damage, travel expenses, an emergency ambulance trip, a six-day hospital
 6 stay, pain and suffering, humiliation and a temporary inability to do housework); *see also White v. FCI*
 7 *USA, Inc.*, 319 F.3d 672, 674 (5th Cir. 2003) (holding that it was facially apparent that plaintiff's
 8 wrongful termination exceeded \$75,000.00 based on the lengthy list of compensatory and punitive
 9 damages combined with a claim for attorney fees in her Complaint).

10 As such, it is wholly reasonable that these cumulative claims for damages and diversity of the
 11 parties meet the requisite requirements set forth by 28 U.S.C. §1441(b) and 28 U.S.C. §1332.

12 **PRAYER**

13 WHEREFORE, Petitioner prays that the above-entitled action be removed from the Eighth
 14 Judicial District Court in and for Clark County, Nevada, to this Court.

15
 16 DATED this 10th day of January, 2020.

17 **PHILLIPS, SPALLAS & ANGSTADT LLC**

18
 19 */s/ Megan E. Wessel*

20 _____
 21 ROBERT K. PHILLIPS, ESQ.
 22 Nevada Bar No. 11441
 23 MEGAN WESSEL, ESQ.
 24 Nevada Bar No. 14131
 25 LATISHA ROBNSON, ESQ.
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 28 Las Vegas, Nevada 89101

Attorneys for Defendant
Wal-Mart, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of January, 2020, I served a true and correct copy of the foregoing, **DEFENDANT WAL-MART, INC.'S PETITION FOR REMOVAL OF CIVIL ACTION**, as follows:

☐ By facsimile addressed to the following counsel of record, at the address listed below:

☐ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☐ By Hand Delivery (ROC); and/or

☒ By Electronic Filing/Service Notification to:

ATTORNEY OF RECORD	PHONE/FAX	PARTY
LINDA K. CULLEN, ESQ. Nevada Bar No. 12364 PAUL R. M. CULLEN, ESQ. Nevada Bar No. 12355 BERTOLDO BAKER CARTER & SMITH 704 W. Sahara Avenue Las Vegas, NV 89117	Phone 702-228-2600 Fax 702-228-2333	Plaintiff

/s/ Clarissa Reyes

An Employee of PHILLIPS, SPALLAS & ANGSTADT, LLC